

404.5 Guidelines for the recognition of expenses.

404.10 Ratemaking procedures and guidelines.

APPENDIX A TO PART 404—RATEMAKING ANALYSES AND METHODOLOGY

APPENDIX B TO PART 404—RATEMAKING DEFINITIONS AND FORMULAS

APPENDIX C TO PART 404—PROCEDURES FOR ANNUAL REVIEW OF BASE PILOTAGE RATES

AUTHORITY: 46 U.S.C. 2104(a), 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1.

§ 404.1 General ratemaking provisions.

(a) The purpose of this part is to provide guidelines and procedures for Great Lakes pilotage ratemaking. Included in this part are explanations of the steps followed in developing a pilotage rate adjustment, the analysis used, and the guidelines followed in arriving at the pilotage rates contained in part 401 of this chapter.

(b) Great Lakes pilotage rates shall be reviewed annually in accordance with the procedures detailed in Appendix C to this part. The Director shall review Association audit reports annually and, at a minimum, the Director shall complete a thorough audit of pilot association expenses and establish pilotage rates in accordance with the procedures detailed in § 404.10 of this part at least once every five years. An interested party or parties may also petition the Director for a review at any time. The petition must present a reasonable basis for concluding that a review may be warranted. If the Director determines, from the information contained in the petition, that the existing rates may no longer be reasonable, a full review of the pilotage rates will be conducted. If the full review shows that pilotage rates are within a reasonable range of their target, no adjustment to the rates will be initiated.

[60 FR 18370, Apr. 11, 1995, as amended at 61 FR 21084, May 9, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 404.5 Guidelines for the recognition of expenses.

(a) The following is a listing of the principal guidelines followed by the Director when determining whether ex-

penses will be recognized in the ratemaking process:

(1) Each expense item included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service, and if so, what dollar amount is reasonable for that expense item. Each Association is responsible for providing the Director with sufficient information to show the reasonableness of all expense items. The Director will give the Association the opportunity to defend any expenses that are questioned. However, subject to the terms and conditions contained in other provisions of this part, expense items that the Director determines are not reasonable and necessary for the provision of pilotage services will not be recognized for ratemaking purposes.

(2) In determining reasonableness, each expense item is measured against one or more of the following:

(i) Comparable or similar expenses paid by others in the maritime industry,

(ii) Comparable or similar expenses paid by other industries, or

(iii) U.S. Internal Revenue Service guidelines.

(3) Lease costs for both operating and capital leases are recognized for ratemaking purposes to the extent that they conform to market rates. In the absence of a comparable market, lease costs are recognized for ratemaking purposes to the extent that they conform to depreciation plus an allowance for return on investment (computed as if the asset had been purchased with equity capital). The portion of lease costs that exceed these standards is not recognized for ratemaking purposes.

(4) For each Association, a market-equivalent return-on-investment is allowed for the net capital invested in the Association by its members. Assets subject to return on investment provisions are subject to reasonableness provisions. If an asset or other investment is not necessary for the provision of pilotage services, the return element is not allowed for ratemaking purposes.

§ 404.10

(5) For ratemaking purposes, the revenues and expenses generated from Association transactions that are not directly related to the provision of pilotage services are included in rate-making calculations as long as the revenues exceed the expenses from these transactions. For non-pilotage transactions that result in a net financial loss for the Association, the amount of the loss is not recognized for rate-making purposes. The Director reviews non-pilotage activities to determine if any adversely impact the provision of pilotage service, and may make rate-making adjustments or take other steps to ensure the provision of pilotage service.

(6) Medical, pension, and other benefits paid to pilots, or for the benefit of pilots, by the Association are treated as pilot compensation. The amount recognized for each of these benefits is the cost of these benefits in the most recent union contract for first mates on Great Lakes vessels. Any expenses in excess of this amount are not recognized for ratemaking purposes.

(7) Expense items that are not reported to the Director by the Association are not considered by the Director in ratemaking calculations.

(8) Expenses are appropriate and allowable if they are reasonable, and directly related to pilotage. Each Association must substantiate its expenses, including legal expenses. In general, the following are not recognized as reasonable expenses for ratemaking purposes:

- (i) Undocumented expenses;
- (ii) Expenses for lobbying;
- (iii) Expenses for personal matters;
- (iv) Expenses that are not commensurate with the work performed; and
- (v) Any other expenses not directly related to pilotage.

(9) In any Great Lakes pilotage district where revenues and expenses from Canadian pilots are commingled with revenues and expenses from U.S. pilots, Canadian revenues and expenses are not included in the U.S. calculations for setting pilotage rates.

(10) Reasonable profit sharing for non-pilot employees of pilot associations will be allowed as an expense for ratemaking purposes. Profit sharing

46 CFR Ch. III (10–1–06 Edition)

that benefits pilots will be treated as part of pilot compensation.

[60 FR 18370, Apr. 11, 1995. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG–1998–3976, 63 FR 35139, June 29, 1998]

§ 404.10 Ratemaking procedures and guidelines.

(a) Appendix A to this part is a description of the types of analyses performed and the methodology followed in the development of a base pilotage rate. Ratemaking calculations in appendix A of this part are made using the definitions and formulas contained in appendix B of this part. Appendix C of this part is a description of the methodology followed in the development of annual reviews to base pilotage rates. Pilotage rates actually implemented may vary from the results of the calculations in appendices A, B and C of this part, because of agreements with Canada requiring identical rates, or because of other circumstances to be determined by the Director. Additional analysis may also be performed as circumstances require. The guidelines contained in § 404.05 are applied in the steps identified in appendix A to this part.

(b) A separate ratemaking calculation is made for each of the following U.S. pilotage areas:

Area 1—the St. Lawrence River;
Area 2—Lake Ontario;
Area 4—Lake Erie;
Area 5—the navigable waters from South East Shoal to Port Huron, MI;
Area 6—Lakes Huron and Michigan;
Area 7—the St. Mary's River; and
Area 8—Lake Superior.

[60 FR 18370, Apr. 11, 1995. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG–1998–3976, 63 FR 35139, 35140, June 29, 1998]

APPENDIX A TO PART 404—RATEMAKING ANALYSES AND METHODOLOGY

Step 1: Projection of Operating Expenses

(1) The Director projects the amount of vessel traffic annually. Based upon that projection, the Director forecasts the amount of fair and reasonable operating expenses that pilotage rates should recover. This consists of the following phases:

- (a) Submission of financial information from each Association;
- (b) determination of recognizable expenses;